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7 CAPITAL GROUP COMMUNICATIONS, INC.

8  
9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 COLONIAL STOCK TRANSFER,

13 Plaintiff,

14 v.

15 GOTTAPLAY INTERACTIVE, INC., a  
16 Nevada corporation, and CAPITAL GROUP  
COMMUNICATIONS, INC., a California  
17 corporation,

18 Defendants.  
19

Case No. C-07-04470 EMC

**CAPITAL GROUP'S OPPOSITION TO  
COLONIAL'S MOTION TO SHORTEN  
TIME REGARDING MOTION FOR  
DISCHARGE OF COLONIAL**

20 Pursuant to Local Rule 6-3(c), defendant Capital Group Communications, Inc.  
21 ("Capital Group") opposes the Ex Parte Application for Order Shortening Time (the  
22 "Application") filed by plaintiff Colonial Stock Transfer ("Colonial"). The Application does not  
23 comply with the Local Rules, was not stipulated to by Capital Group and fails to establish a basis  
24 for the hearing of any motion on shortened time. The Application is made in support of  
25 Colonial's purported Motion for Discharge of Stakeholder in Interpleader Action (the "Motion"),  
26 which also fails to comply with the Local Rules and improperly seeks to discharge Colonial from  
27 all potential liability in the related action, Case No. C-07-3632, *Capital Group Communications,*  
28 *Inc. v. Gottaplay Interactive, Inc., et al.*

1           The Application fails to make any specific request to shorten time as required by  
2 Local Rule 6-3. Instead, Colonial requests that the Court pull briefing dates out of thin air to  
3 respond to the Motion. The purported Motion consists of two sentences and does not comply  
4 with Local Rule 7. There is no memorandum of points and authorities, no statement of requested  
5 relief, no noticed hearing date and time, and no proposed order, among other things. Therefore,  
6 there is no way that Capital Group can propose, or that the Court can set, reasonable deadlines for  
7 responding to such a nonexistent and unexplained "Motion." For these reasons, the Court should  
8 simply strike the Motion as well as the Application.

9           Contrary to the statement in paragraph 6 of Colonial's "Certification in Support of  
10 Ex Parte Application for Order Shortening Time," Capital Group did not agree to a hearing of this  
11 matter on shortened time and did not even meet and confer with Colonial on the subject. *See*  
12 Declaration of Michael Donner in Support of Capital Group's Opposition to Colonial's Motion to  
13 Shorten Time. If Capital Group had agreed to shorten time, the parties would have submitted a  
14 stipulated request for order shortening time in compliance with Local Rule 6-2.

15           Capital Group will not agree to hear a motion to discharge on shortened time  
16 because, among other reasons, Capital Group intends to file claims against Colonial shortly.  
17 Colonial also intends to move to dismiss Colonial's interpleader action because it is deficient in  
18 many respects, including at least the following four reasons:

19           1. Capital Group, not Colonial, has control of the 2,000,000 shares of stock  
20 issued by Gottaplay Interactive, Inc. ("Gottaplay") that Colonial purportedly interpleaded into the  
21 Court's registry. Capital Group yielded possession of the stock certificate for these shares on  
22 August 14, 2007, during the pendency of Capital Group's related action against Gottaplay, for the  
23 limited purpose of selling 311,011 shares of Gottaplay. As set forth in the Declaration of Devin  
24 Bosch in Support of Plaintiff's Motion for Preliminary Injunction, which was previously filed  
25 with this Court, Colonial, in collusion with Gottaplay, accepted the stock certificate from Capital  
26 Group for the purpose of effectuating the proposed transfer and sale and then, without Capital  
27 Group's knowledge and consent, violated Capital Group's ownership rights by (1) failing to  
28 comply with Capital Group's transfer request; (2) keeping the certificate for purposes other than

1 those to which Capital Group consented; (3) conspiring with Gottaplay on how to best delay and  
2 frustrate Capital Group's transfer request; and (4) purporting to interplead the stock certificate  
3 with the Court. As Capital Group at all times owned and controlled the stock certificate prior to  
4 these actions, Colonial is not a stakeholder, and therefore, has no right to interplead.<sup>1</sup>

5           2. Interpleader actions are not designed to protect an agent, Colonial, acting  
6 collusively and in bad faith with its principal, Gottaplay. When the purported stakeholder stands  
7 as a wrongdoer with respect to any party in the litigation, it cannot discharge its liability via  
8 interpleader. Among other things, Colonial is liable under sections 8-401 and 8-407 of the  
9 California Commercial Code for its failure to register the transfer of 311,011 shares of Gottaplay  
10 stock as requested by Capital Group. Section 8-401 imposes damages on an issuer for failure to  
11 register a transfer of a security; Section 8-407 specifically imposes liability on the transfer agent  
12 in addition to the issuer.

13           3. Even if the Court were to discharge Colonial to some extent, the order of  
14 discharge would have to be limited carefully so as not to preclude Capital Group from asserting  
15 claims based on Colonial's independent liability. In an interpleader action, the Court cannot  
16 adjudicate independent claims against Colonial; at most, the Court can distribute what is  
17 interpleaded (i.e., give Capital Group back its shares which were misappropriated by Colonial).  
18 Colonial, for its part, has requested that "Colonial be discharged from any and all liability with  
19 regard to claims to the interpleaded [shares]." Application, at 3. Such relief is grossly overbroad  
20 as it might preclude claims for damages under the California Commercial Code as well as  
21 common law claims. Colonial is the agent and acts on behalf of Gottaplay, and they cannot avoid  
22 damages for failure to honor a transfer request, as required by the code, simply by accepting  
23 Capital Group's stock certificate under false pretenses and interpleading it into the Court's  
24 registry. If that were the case, every issuer and agent looking to avoid their statutory duty to  
25 register a transfer could simply purport to interplead the share certificate.

26  
27 <sup>1</sup> True stakeholders, such as life insurance companies, own and control property which they  
28 are contractually obligated to pay out, i.e., the life insurance proceeds. A life insurance company  
that interpleads \$1,000,000 does so from its own funds; it does not obtain the money under false  
pretenses from its insured and then interplead it.

1           4.       There are no current adverse claims to the interpleaded shares. Capital  
2 Group has owned the shares at all times and only yielded the shares to Colonial for the limited  
3 purpose of selling 311,011 shares under SEC Rule 144. Gottaplay, the alleged adverse claimant,  
4 has taken the position in its securities filings that it purportedly “cancelled” the stock.  
5 Accordingly, Gottaplay has no adverse claim to ownership of shares that it asserts no longer exist.  
6 Gottaplay’s effort to try to void the share certificate belatedly does not amount to a claim of  
7 ownership of shares, but rather a claim to void them in the future.

8           In sum, a motion for discharge is an important motion with potentially dispositive  
9 effect insofar as it may immunize a stakeholder from some, or all, liability. It should not be heard  
10 on shortened time, particularly where no proper motion has been filed or the basis for such a  
11 motion explained in any meaningful way. The Court therefore should strike Colonial’s  
12 application for shortened time and motion for discharge.

13  
14 Dated: September 18, 2007

STEIN & LUBIN LLP

15  
16 By: /s/ Jonathan E. Sommer

Jonathan E. Sommer

Attorneys for Defendant

CAPITAL GROUP COMMUNICATIONS, INC.